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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

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REPLY COMMENTS OF MIDCONTINENT TELEVISION OF SOUTH DAKOTA, INC.

Midcontinent Television of South Dakota, Inc. ("Midcontinent"), licensee of Television Stations KELO-TV, Sioux Falls, KPLO-TV, Reliance, KDLO-TV, Florence and KCLO-TV, Rapid City, South Dakota, by its attorney, hereby submits its Reply to comments filed in the Commission's Further Notice of Proposed Rulemaking[1/] in the above-captioned proceedings.

The Further Notice sought additional comment on the FCC's proposal to change its rules regarding local and national broadcast television ownership. The Commission also incorporated into the Further Notice an outstanding rulemaking proceeding (Second Further Notice of Proposed Rulemaking, MM Docket No. 87-8) seeking comment

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1/ Further Notice of Proposed Rulemaking, MM Docket Nos. 91-221, 87-8, FCC 94-322 (January 17, 1995) ("Further Notice").

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on whether the exemption from the national television ownership restriction should continue to apply to satellite television stations. It is to this question that Midcontinent directs these Reply comments.

In its Second Further Notice of Proposed Rulemaking, the Commission explained that the original rationale for the satellite exemption was that "satellite stations primarily rebroadcast the programming of parent stations rather than originate programming".[2/] With the elimination in 1991 of the 5% restriction on the amount of programming a TV satellite station can originate[3/], the FCC questioned whether or not there remained a reason to retain the exemption for satellites from the national ownership rule. Midcontinent submits that the original rationale remains valid and the exemption from the national ownership limits should be retained.

The history of Midcontinent's satellite television operations demonstrates the significant contribution made by satellite TV stations to the public interest. Midcontinent's parent television station, KELO-TV, went on the air in May, 1953,

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2/ Second Further Notice of Proposed Rulemaking, 6 FCC Rcd 5010 (1991).

3/ In the Matter of Television Satellite Stations, Review of Policy and Rules, 6 FCC Rcd 4212 (1991).

with the carriage of the first, over-the-air CBS programming to eastern South Dakota and significant parts of Minnesota, Iowa and Nebraska. This heritage was continued with the initiation of service by Satellite Station KDLO-TV, Florence, in September, 1953, designed to fully serve the northeastern section of South Dakota and with the initiation of service by Satellite Station KPLO-TV, Reliance, in July, 1975, designed to extend service to the central portion of South Dakota. After operation of a TV Translator serving the western portion of the state for many years, Midcontinent put Satellite Station KCLO-TV on the air in November, 1988.

All three of these stations have always carried and continue to carry 100 percent of the programming of parent Station KELO-TV. These stations serve very small markets (Rapid City, 1990 pop. 54,523; Florence, 1990 pop. 192 and Reliance, 1990 pop. 169).[4/] Each is licensed to an underserved market receiving over-the-air service it would likely not otherwise receive. The FCC acknowledged in its <u>Second Further Notice of Proposed Rulemaking</u>

4/ KDLO-FM is licensed to Florence, South Dakota, and also serves the communities of Huron (1990 pop. 12,448), Watertown (1990 pop. 17,592) and Aberdeen (1990 pop. 24,927). KPLO-TV is licensed to Reliance and also serves the communities of Pierre, the state capital (1990 pop. 12,906) and Winner (1990 pop. 3,354).

that these factors would support retention of the exemption from the national ownership restriction:

> "One possible rationale for preserving the exemption is implicit in the R&O. Grant of a satellite application typically means that an underserved market will be obtaining an additional service it would not otherwise receive. If such application is denied solely because the applicant owns twelve stations, presumably no other prospective station owner would stand ready to come forward to serve the market. Under these circumstances, it appears that counting the satellite against the licensee's national ownership limit would not serve the public interest."[5/]

The basic premise underlying this rationale remains the same. Satellite stations which rebroadcast 100 percent of a parent station's programming do so because they offer service to a community where independent service has not proven economically viable. The elimination in 1991 of the local program origination cap has not altered the fundamental reason that satellite stations exist: to provide service to markets incapable of supporting stand-alone service. The continued operation of such stations in such markets is in the public interest. Counting such stations towards the national ownership restriction where the primary reason

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5/ Second Further Notice of Proposed Rulemaking, supra. at 5010-5011.

for the existence of such stations has not changed would run counter to logic.

Given these circumstances, Midcontinent submits that the FCC should retain the exemption from the national ownership restrictions for satellite stations. Should the FCC determine that modification of this exemption is desirable, Midcontinent suggests that one alternative would be to limit the application of the exemption to satellite stations which operate according to the pre-1991 definition -- i.e., 100 percent satellites retransmitting all of the programming of its parent or stations categorized as "primarily a satellite" which air most of a parent's programming, but originate less than five percent local programming.[6/] In this manner, the national ownership restriction would apply only to those television stations which no longer truly operate as "satellites" and thus should count towards a licensee's ownership limit. At a minimum, however, should the FCC decide to eliminate this exemption entirely, the FCC should "grandfather-in" all existing TV satellite station operations that otherwise would be in violation of the rule and/or should consider adopting a national ownership benchmark other than the number of stations to apply to

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6/ See Amaturo Group, Inc., 68 FCC 2d 899 (1978).

the ownership of satellite stations which qualify under the pre-1991 definition of such stations.

CONCLUSION

While there have been many changes in the video programming marketplace since the multiple ownership rules were adopted, there has been no change in the need of smaller communities for free, over-the-air television programming. Satellite stations such as KPLO-TV, KDLO-TV and KCLO-TV continue to operate in the public interest by serving underserved markets with a full schedule of network programming. Since the rationale for exempting such satellite stations from the national multiple ownership restriction has not changed, the exemption should be preserved.

Respectfully submitted,

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